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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,548	11/25/2003	Michael I. Larkin	WTC0304	9732

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EXAMINER

MERLINO, AMANDA H

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,548	Applicant(s) LARKIN, MICHAEL I.	
	Examiner Amanda H. Merlino	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

The claims (6, 7, 8, and 11) are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Applicant is reminded that the use of reference characters is to be considered as having no effect on the scope of the claims and thus can not be used to provide antecedent basis.

Claims 1, 6 and 10 objected to because of the following informalities:

a) on line 10 of claim 1, it is unclear as to which surface "said surface" is referring to; it appears that it should read "said rearmost exterior surface"

b) on line 12 of claim 1, it appears that "front exterior surface" should read "said first surface" as claimed on line 3 of claim 1;

c) on line 13 of claim 6, it is unclear as to which surface "said surface" is referring to; it appears that it should read "said rear surface".

d) on lines 1 and 3 of claim 10, it refers to "a liquid" and "said liquid" to refer to the "fluid" claimed in claim 1; it appears "a liquid" and "said liquid" should be changed to "a fluid" and "said fluid".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, the language "similar" is unclear and indefinite. Does it mean that it is similar in size, shape, composition etc...? Applicant uses the term "similar" in reference to the description of the triangular chambers in figure 1 as being "similar", wherein "similar" refers to both triangular chambers being right angle structures.

However, the present claimed invention requires that one of the triangular chambers not be a right angle structure.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,975,392. Although the conflicting claims are not identical, they are not patentably distinct from each other because both teach of a refractometer comprising a transparent material having a pair of plane exterior surfaces permitting a beam of light to be incident on a first surface, two fluid containing chambers, each forming a triangle and at least one of whose sides in the path of the light beam passing there through is not parallel to a corresponding side of the other; the only difference being that the claims in 6,975,392

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do not claim a mirror means. At the time of the invention, it would have been obvious to provide a mirror means to transmit the light reflected from the mirror back to the chamber to improve the sensitivity (more specifically double the sensitivity) of the measurement which would provide a more accurate and precise measurement.

With reference to claims 8-11, the claims in 6,975, 392 do not claim the equations to compute the refractive index. At the time of the invention, it would have been obvious to one of ordinary skill in the art to derive the equations using basic geometry.

Claims 1-11 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 10 and 13 of copending Application No. 10/961,633. Although the conflicting claims are not identical, they are not patentably distinct from each other because both teach of a refractometer comprising a transparent material having a pair of plane exterior surfaces permitting a beam of light to be incident on a first surface, two fluid containing chambers, each forming a triangle and at least one of whose sides in the path of the light beam passing there through is not parallel to a corresponding side of the other. The claims in Application No. 10/961,633 anticipated examined claims.

With reference to claims 8-11, the claims in Application No. 10/961,633 do not claim the equations to compute the refractive index. At the time of the invention, it would have been obvious to one of ordinary skill in the art to derive the equations using basic geometry.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Reasons for Allowance

Claims 1-3 and 5-11 and would be allowable upon the filing of a terminal disclaimer to overcome the obviousness double patenting rejection as stated above.

Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims and upon the filing of a terminal disclaimer to overcome the obviousness double patenting rejection as stated above.

As to claims 1-5 and 8-11, the prior of record, taken alone or in combination, fails to disclose or render obvious a refractometer comprising two fluid containing chambers, each chamber forming a triangle and wherein at least one of whose side in the path of the light beam passing there through is not parallel to a corresponding side of the other triangle, in combination with the rest of the limitations of claim the rest of the limitations of claim 1.

As to claims 6 and 7, the prior of record, taken alone or in combination, fails to disclose or render obvious a refractometer comprising two fluid containing chambers, each chamber forming a triangle and wherein one is an isosceles triangle and the other is a triangle with one 45 degree base angle and a second angle slightly less than 45 degree yielding a third angle slightly greater than a right, in combination with the rest of the limitations of claim the rest of the limitations of claim 6.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

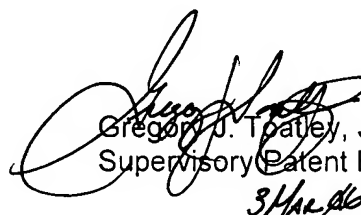
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda H Merlino whose telephone number is 571-272-2421. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J Toatley, Jr. can be reached on 571-272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amanda H Merlino *ah*
Patent Examiner
Art Unit 2877
February 24, 2006


Gregory J. Toatley, Jr.
Supervisory Patent Examiner
3/1/06